

ASSEMBLY BILL

No. 479

Introduced by Assembly Member Maldonado

February 14, 2003

An act to amend Sections 17209.3, 17304, 17312, 17314, 17321, and 17331.2 of the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

AB 479, as introduced, Maldonado. Escrow agents.

Existing law, the Escrow Law, provides for licensing and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted. Existing law requires persons licensed as escrow agents to be members of the Escrow Agents' Fidelity Corporation, which is established as a nonprofit corporation to indemnify its members against loss, subject in certain cases to a deductible, and which is funded by fees and assessments on its members. Existing law requires employees of escrow agents and various other persons to obtain a certificate from the corporation as a condition of employment or compensation.

This bill would authorize the commissioner to refuse to issue a license to an applicant that has failed to comply with the corporation's membership requirements. The bill would revise the application requirements for membership in, and certification by, the corporation. The bill would revise the schedule establishing the coverage the corporation is required to provide its members. The bill would revise the annual assessment the corporation bills and collects from its members. The bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17209.3 of the Financial Code is amended to read:

17209.3. The commissioner may refuse to issue any license being applied for, and shall refuse to issue any license being applied for if upon his examination and investigation, and after appropriate hearing, he finds any of the following:

(a) That the corporation is to be formed for any business other than legitimate escrow agent services, or proposes to use a name that is misleading or in conflict with the name of an existing licensee.

(b) That any incorporator, officer, or director of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(c) That there is no officer or manager possessing a minimum of five years of responsible escrow or joint control experience stationed or to be stationed at the main office of the corporation and that there is no officer, manager or employee possessing a minimum of four years of responsible escrow or joint control experience stationed or to be stationed at each branch.

(d) That the proposed licensee's financial program is unsound.

(e) A false statement of a material fact has been made in the application for license.

(f) The applicant or any officer, director, or incorporator of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(g) *The applicant has failed to comply with the Fidelity Corporation's membership requirements set forth in subdivision (b) of Section 17312 and in Sections 17331 and 17331.1.*

SEC. 2. Section 17304 of the Financial Code is amended to read:

17304. "Loss," within the meaning of this chapter, means the loss of trust obligations held by a member within the State of California as a result of the fraudulent or dishonest abstraction,

misappropriation, or embezzlement of trust obligations by an officer, director, trustee, stockholder, manager, or employee of a member *whether caused by one or more of those persons by a single act, a series of related acts, or by a common scheme.*

SEC. 3. Section 17312 of the Financial Code is amended to read:

17312. (a) Each person licensed pursuant to this division who is engaged in the business of receiving escrows specified in subdivision (c) and whose escrow business location is located within the State of California shall participate as a member in Fidelity Corporation in accordance with this chapter and rules established by the board of directors of Fidelity Corporation. Fidelity Corporation shall not deny membership to any escrow agent holding a valid unrevoked license under the Escrow Law who is required to be a member under this subdivision.

(b) Upon filing a new application for licensure as required by ~~subdivision (b) of Section 17213~~ 17201, persons required to be a member of Fidelity Corporation shall file a copy thereof concurrently with Fidelity Corporation, ~~but no additional membership fee or deposit shall be required.~~ *The copy of the application shall include the three thousand dollar (\$3,000) fee specified in subdivision (a) of Section 17320 and all required Fidelity Corporation Certificates set forth in Sections 17331 and 17331.1. Fidelity Corporation shall promptly furnish to the commissioner a compliance letter confirming that the applicant has satisfied the requirements to be a member of Fidelity Corporation.*

(c) The required membership in Fidelity Corporation shall be limited to those licensees whose escrow business location is located within the State of California and who engage, in whole or in part, in the business of receiving escrows for deposit or delivery in the following types of transactions:

(1) Real property escrows, including, but not limited to, the sale, encumbrance, lease, exchange, or transfer of title, and loans or other obligations to be secured by a lien upon real property.

(2) Bulk sale escrows, including, but not limited to, the sale or transfer of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits.

1 (3) Fund or joint control escrows, including, but not limited to,
2 transactions specified in Section 17005.1, and contracts specified
3 in Section 10263 of the Public Contract Code.

4 (4) The sale, transfer of title, or refinance escrows for
5 manufactured homes or mobilehomes.

6 (5) Reservation deposits required under Article 2
7 (commencing with Section 11010) of Chapter 1 of Part 2 of
8 Division 4 of the Business and Professions Code or by regulation
9 of the Department of Real Estate to be held in an escrow account.

10 (6) Escrows for sale, transfer, modification, assignment, or
11 hypothecation of promissory notes secured by deeds of trust.

12 (d) Coverage required to be provided by Fidelity Corporation
13 under this chapter shall be provided to members only for loss of
14 trust obligations with respect to those types of transactions
15 specified in subdivision (c). Indemnity coverage for those types of
16 transactions not specified in subdivision (c) shall be provided by
17 escrow agents in accordance with Section 17203.1.

18 SEC. 4. Section 17314 of the Financial Code is amended to
19 read:

20 17314. (a) Fidelity Corporation shall pay a member for loss
21 of trust obligations subject to the limitations set forth in this
22 chapter. Fidelity Corporation shall pay or deny the claim within 90
23 days of receipt of the proof of loss filed by a member, or a
24 member's successor in interest. Notwithstanding any other
25 provision of this article, the protection to members provided by
26 Fidelity Corporation and by the fidelity bond or insurance policy,
27 if any, shall not extend to any transaction involving any member
28 at any branch or business location outside the State of California,
29 but shall extend only to escrow trust obligations and trust funds
30 located within the State of California.

31 (b) Coverage shall be provided to members in accordance with
32 the following schedule:
33

MONTHLY AVERAGE ESCROW

LIABILITY PER LOCATION	COVERAGE
\$0 – \$ 1,000,000	\$1,000,000
over \$1,000,000 – \$ 3,000,000	\$2,000,000
over \$3,000,000 – \$ 5,000,000	\$3,000,000
over \$5,000,000 – \$ 7,500,000	\$4,000,000
over \$7,500,000 – \$10,000,000	\$5,000,000

However, pursuant to the schedule, the minimum coverage for each licensed location shall be one million dollars (\$1,000,000), including a maximum of five million dollars (\$5,000,000) or less.

(c) A member shall maintain minimum coverage in accordance with the schedule in subdivision (b) and shall monitor its escrow liability monthly. An increase in escrow liability above the monthly average escrow liability coverage as provided for in subdivision (b) shall be reported immediately to Fidelity Corporation. Upon receipt of this report, Fidelity Corporation shall immediately provide for the increase in coverage, and shall immediately bill and collect pursuant to Section 17321, an amount necessary to provide for the increased coverage.

(d) Any member with a licensed location or locations with a monthly average escrow liability greater than ten million dollars (\$10,000,000) shall obtain a bond from a corporate surety which is an admitted insurer in the State of California insuring the balance of trust funds not covered by Fidelity Corporation, in a ratio of one dollar of coverage for every three dollars of trust obligations not covered by Fidelity Corporation. The Fidelity Corporation shall have the authority to obtain the excess coverage bond. The cost of the bond shall be shared pro rata by those members included in the coverage.

(e) If a member establishes, to the satisfaction of the commissioner, that a bond is not available or is impracticable under subdivision (d), then, at the member's election, either:

(1) The member shall place average trust obligations in excess of ten million dollars (\$10,000,000) in a restricted escrow trust account. Each transfer or release of the funds to be made by specific resolution of the member's board of directors and the signature of a neutral third party and written approval of Fidelity Corporation; or

(2) The licensed location of the member with average trust balances in excess of ten million dollars (\$10,000,000) shall be subject to examinations to be conducted at a frequency as deemed appropriate and necessary by the commissioner or Fidelity Corporation, but not less frequently than once a year.

(f) Any member subject to subdivision (e) shall within 10 business days after the effective date of this section notify Fidelity Corporation of its election. A member who subsequently becomes subject to subdivision (e) shall within a like period of time notify Fidelity Corporation of its election. Fidelity Corporation shall also be notified of any change of election in a like period of time. Fidelity Corporation shall notify the commissioner within 10 business days of receipt of any notice under this subdivision of the elections made. All notices under this subdivision shall be in writing.

SEC. 5. Section 17321 of the Financial Code is amended to read:

17321. Fidelity Corporation shall bill and collect from each member an annual premium ~~which~~ *that* in the aggregate shall consist of assessments for the operations fund and the fidelity fund.

(a) The annual assessment for the operations fund shall be assessed no later than October 15 of each year for the current fiscal year in accordance with subdivision (b) of Section 17320. The payment of any invoice for assessments under this subdivision is payable by the member escrow agent in three equal and consecutive monthly installments with the first installment payable at or within 30 days after receipt of the Fidelity Corporation invoice. The assessment shall include:

(1) All costs and expenses of administration as budgeted by the board of directors for the current fiscal year.

(2) Any expenses actually incurred in the preceding fiscal year which exceeded the budgeted costs of expenses and administration except for expenses recovered pursuant to subdivision (a) of Section 17321.1.

Each member's assessment shall be determined pro rata based upon the ratio of each member's licensed locations to the total licensed locations of all members as of the preceding June 30.

Members licensed on or after July 1 of each year shall be assessed only for costs and expenses pursuant to paragraph (1) of

1 this subdivision. This assessment shall be prorated on a monthly
2 basis.

3 (b) The annual assessment for the fidelity fund shall be
4 assessed no later than May 1. The assessment shall *be based upon*
5 *the balances of the membership fund and the fidelity fund as of*
6 *December 31 of the previous year and the escrow liability schedule*
7 *of each licensed location as provided in Section 17348, and shall*
8 *be calculated as follows:*

9 (1) If the membership fund and fidelity fund in the aggregate
10 equal an amount less than five million dollars (\$5,000,000), then
11 the assessment shall be the greater of: (A) ~~one million dollars~~
12 ~~(\$1,000,000); or (B) the sum of (i) the greater of an the amount~~
13 ~~necessary to bring the membership fund and fidelity fund in the~~
14 ~~aggregate up to five million dollars (\$5,000,000) or the total of all~~
15 ~~claims paid during the preceeding fiscal year (except to the extent~~
16 ~~of any special assessment made pursuant to subdivision (b) of~~
17 ~~Section 17321.1) plus (ii) the greater of four hundred thousand~~
18 ~~dollars (\$400,000) or 0.045 percent of the total average trust~~
19 ~~obligations of all members as reflected in the most recent report~~
20 ~~required by Section 17348, but not to exceed one million dollars~~
21 ~~(\$1,000,000) per assessment, or (B) the amount necessary to~~
22 ~~maintain a minimum fidelity fund balance of two million five~~
23 ~~hundred thousand dollars (\$2,500,000), including the amount of~~
24 ~~the assessment, or (C) four hundred thousand dollars (\$400,000).~~

25 (2) If the membership fund and fidelity fund in the aggregate
26 equal an amount that is at least five million dollars (\$5,000,000)
27 ~~but less than 1 percent of the total average trust obligations for all~~
28 ~~members as reflected in the most recent report required by Section~~
29 ~~17348 or the fidelity fund equals an amount less than five million~~
30 ~~dollars (\$5,000,000), then the assessment shall be: (A) an amount~~
31 ~~equal to the total of all claims paid during the preceeding fiscal year~~
32 ~~(except to the extent of any special assessment made pursuant to~~
33 ~~subdivision (b) of Section 17321.1); and (B) an amount which is~~
34 ~~the greater of four hundred thousand dollars (\$400,000) or 0.045~~
35 ~~percent of the total average trust obligations of all members as~~
36 ~~reflected in the most recent report required by Section 17348.~~

37 (3) ~~If the membership fund and fidelity fund in the aggregate~~
38 ~~equal 1 percent of the total average trust obligations of all members~~
39 ~~as reflected in the most recent report required by Section 17348~~
40 ~~and the fidelity fund equals at least five million dollars~~

~~(\$5,000,000), then the assessment shall be an amount equal to the actuarial projection of losses for the forthcoming fiscal year, the assessment shall be four hundred thousand dollars (\$400,000).~~

Each member's fidelity fund assessment for paragraphs (1), and (2), ~~and (3)~~ shall be the amount derived by multiplying the amount to be assessed by the ratio that each member's risk factors bear to the total of all members' risk factors.

A member's risk factors shall be computed in accordance with the following formula, except that the total factors of a member shall be reduced by one for each licensed branch location:

Coverage per Licensed Location	Factors
\$1,000,000	3
\$2,000,000	5
\$3,000,000	7
\$4,000,000	8
\$5,000,000	9

(c) Notwithstanding subdivision (b), the assessment for the fidelity fund for the fiscal year beginning July 1, 1989, shall be made immediately upon 90-day notice of cancellation of the fidelity bond or insurance policy permitted by paragraph (2) of subdivision (c) of Section 17310, but in no event later than 60 days prior to the date of cancellation.

(d) Every licensed member as of March 31 shall pay the fidelity fund assessment, without any pro rata adjustment, notwithstanding that the member may have surrendered a license or have a license revoked prior to the date that the assessment is mailed.

SEC. 6. Section 17331.2 of the Financial Code is amended to read:

17331.2. (a) Fidelity Corporation shall deny the application for a certificate or revoke the certificate of any person, upon any of the following grounds:

(1) The application contains a material misrepresentation of fact or fails to disclose a material fact so as to render the application false or misleading, or if any fact or condition exists which, if it had existed at the time of the original application for a certificate,

1 reasonably would have warranted Fidelity Corporation to refuse
2 originally to issue such certificate.

3 (2) That the person has been convicted of, or pleaded nolo
4 contendere to, a crime or offense, whether a felony, an offense
5 punishable as a felony, or a misdemeanor, which involved
6 dishonesty, fraud, deceit, embezzlement, fraudulent conversion,
7 misappropriation of property, or any other crime reasonably
8 related to the qualifications, functions, or duties of a person
9 engaged in business in accordance with this division, ~~which~~
10 ~~conviction has not been expunged and the person has not obtained~~
11 ~~a certificate of rehabilitation, as allowed by the Penal Code. If,~~
12 ~~however, the conviction is more than 10 years old, or the~~
13 ~~conviction has been expunged, or the person has obtained a~~
14 ~~certificate of rehabilitation, as allowed by the Penal Code, or if the~~
15 ~~conviction is for a minor offense or was an~~ infraction, then the
16 person may have a Fidelity Corporation certificate upon showing
17 by clear and convincing proof to a reasonable certainty that the
18 conviction is no longer reasonably related to the qualifications,
19 functions, or duties of *a person engaged in business in accordance*
20 *with this division or that person's employment with a member.*

21 (3) That the person has been held liable in a civil action by final
22 judgment of any court ~~except small claims courts~~, if the judgment
23 involved dishonesty, fraud, deceit, embezzlement, fraudulent
24 conversion, or misappropriation of property *or the person has*
25 *been ordered to make restitution to a victim in any criminal case.*
26 The person may have a Fidelity Corporation certificate upon
27 showing by clear and convincing proof to a reasonable certainty
28 that the judgment *or restitution order* is no longer reasonably
29 related to the qualifications, functions, or duties of *a person*
30 *engaged in business in accordance with this division or that*
31 *person's employment with a member.*

32 (4) That the person has (A) committed or caused to be
33 committed an act which caused any member to suffer a loss; (B)
34 committed or caused to be committed or colluded with any other
35 person committing any act which caused a loss, for which Fidelity
36 Corporation or the insurer on any insurance policy or fidelity bond
37 purchased by Fidelity Corporation, or both, to become liable to
38 indemnify any member; or (C) committed or caused to be
39 committed an act of dishonesty, fraud, deceit, embezzlement,
40 fraudulent conversion, or misappropriation of property, to the

1 material damage of a member or for which the member has been
2 held liable to any third party, by final judgment.

3 (5) That the person has been barred from employment by final
4 order of the commissioner pursuant to Section 17423.

5 (6) That the person has been deemed not qualified to serve in
6 any capacity as a director or officer or in any other position
7 involving management duties with a financial institution, pursuant
8 to Division 1.8 (commencing with Section 4990).

9 (7) That the person has been denied coverage or reinstatement
10 by any insurer under any fidelity bond or crime policy, unless a
11 decision of reinstatement of coverage has been made after such
12 denial. A person who obtained a decision of reinstatement of
13 coverage prior to the effective date of this section may have a
14 Fidelity Corporation certificate notwithstanding paragraphs (2)
15 and (3) of this subdivision, unless any other ground for denial or
16 revocation applies to that person.

17 (b) Fidelity Corporation may suspend the certificate of any
18 person upon any of the following grounds:

19 (1) That the person has been censured or suspended from any
20 position of employment or management or control of any escrow
21 agent, by final order of the commissioner. *The certificate*
22 *suspension shall be for a term concurrent with the final order of the*
23 *commissioner.*

24 (2) That there is an action commenced by the commissioner to
25 either suspend or bar such person, under Section 17423.

26 (3) *That the person has been barred from any position of*
27 *employment or management or control of any escrow agent, for a*
28 *term less than permanent, by final order of the commissioner. The*
29 *certificate suspension shall be for a term concurrent with the final*
30 *order of the commissioner.*

31 (4) That any member with whom the person was employed has
32 given a proof of loss or a notice of an occurrence which may give
33 rise to a claim for a loss of trust obligations either of which
34 identifies the person as the person responsible for the loss or as a
35 person acting in collusion with the person causing the loss.

36 (c) Upon denial of an application for, or upon suspension or
37 revocation of the certificate of any person, Fidelity Corporation
38 shall provide written notice to the member with whom that person
39 is employed of the decision, pending any appeal therefrom which
40 might be made. Thereafter, the member shall not allow that person

1 to have access to money or negotiable *instruments or* securities
2 belonging to or in the possession of the escrow agent, or to draw
3 checks upon the escrow agent or the trust accounts of the escrow
4 agent. Fidelity Corporation shall notify the person in writing of the
5 decision to deny, suspend, or revoke the certificate and of the
6 person's right of appeal, together with the notice of appeal. The
7 grounds and basis for the decision shall be stated in the notice
8 thereof. All notices may be served either personally or by mail,
9 properly addressed to the address of record for the member and the
10 person.

11 (d) Any person whose application for a certificate has been
12 denied, or whose certificate has been suspended or revoked, may
13 appeal the decision, as provided in Section 17331.3. While such
14 appeal is pending, the person may not have access to money or
15 negotiable *instruments or* securities belonging to or in the
16 possession of the escrow agent, or to draw checks upon the escrow
17 agent or the trust accounts of the escrow agent. Failure to remove
18 the person whose application has been denied, or whose certificate
19 has been suspended or revoked, as a signer on the trust accounts
20 may be subject to action by the commissioner as provided for in
21 this division and shall be subject to penalties as set forth in Section
22 17331.1.

23 (e) Upon expiration of the time for an appeal, or upon
24 conclusion of the appeal, the decision to deny an application for
25 or to suspend or revoke the certificate of any person shall become
26 final. Fidelity Corporation shall give written notice to the member
27 and to the person of the final decision within 10 days. Thereafter,
28 Fidelity Corporation shall disclose in writing to all members the
29 identity of persons whose application has been denied or whose
30 certificate has been revoked.

